

Montana Water Court
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MONTANA WATER COURT, YELLOWSTONE DIVISION
YELLOWSTONE RIVER ABOVE AND INCLUDING BRIDGER CREEK BASIN
BASIN 43B
PRELIMINARY DECREE

CLAIMANTS: Debra J. Carney; Robert J. DePaso; Richard L.
Edward; Christine Jarrett; Paradise Ridge
Revocable Trust; Troy Weske; Patricia A. Zellar;
Robert P. Zellar; UC River Ranch LLC; Capt Kirk
LLC; Amanda J. Gentry; Raymond S. Gentry;
Jeremy B. Beede; Juana Beede

CASE 43B-0248-R-2020

43B 193595-00

43B 193600-00

NOTICE OF INTENT TO APPEAR: Emigrant Peak Ranch LLC

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusion of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must mail a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

These claims appeared in the Preliminary Decree with issue remarks. Emigrant Peak Ranch LLC filed a notice of intent to appear on each claim. Before addressing the issue remarks and the notices of intent to appear, the following ownership remarks on the abstract of claim 43B 193600-00 were addressed:

ACCORDING TO CADASTRAL PROPERTY OWNERSHIP RECORDS, AS OF 02/28/2017 , A PORTION OF THE PROPERTY ON WHICH THIS WATER RIGHT IS USED APPEARS TO BE OWNED BY YOUNG BRADFORD C.

ACCORDING TO CADASTRAL PROPERTY OWNERSHIP RECORDS, AS OF 09/28/2017 , A PORTION OF THE PROPERTY ON WHICH THIS WATER RIGHT IS USED APPEARS TO BE OWNED BY PARADISE GATEWAY LLC.

ACCORDING TO CADASTRAL PROPERTY OWNERSHIP RECORDS, AS OF 09/28/2017 , A PORTION OF THE PROPERTY ON WHICH THIS WATER RIGHT IS USED APPEARS TO BE OWNED BY DEPASO ROBERT JOHN & SANDRA REYERS.

The December 17, 2020 Order Consolidating Case And Setting Filing Deadline set a January 29, 2021 deadline for these identified persons to file an ownership update and includes: "If not filed by January 29, 2021, the Court will conclude that every person who has not filed an ownership update has determined that they do not have an ownership interest in this claimed water right." Paradise Gateway LLC filed an ownership update but the other persons did not. On March 11, 2021 the Court issued an Order removing the ownership remarks and updating the caption and mailing list accordingly.

After multiple extensions of the settlement filing deadline, the April 26, 2023 Orders set June 26, 2023 as the last settlement filing deadline and if not filed, stated the Case would be put on the hearing track. On June 26, 2023 a Stipulation And Agreement was filed by Robert J. DePaso, Christine Jarrett, Paradise Ridge Revocable Trust, Troy Weske, Capt. Kirk LLC, and Emigrant Peak Ranch LLC. Nothing was filed by Debra J. Carney, Richard L. Edward, Patricia A. Zellar, Robert P. Zellar, UC River Ranch LLC, Amanda J. Gentry, Raymond S. Gentry, Jeremy B. Beede, and Juana Beede. The July 10, 2023 Order Entering Defaults And Setting Show Cause Filing Deadline states:

The Court has reviewed the June 26, 2023 Stipulation And Agreement. It requests modest changes to the place of use and resolves the issue remarks. As the concerns of notice of intent to appear party Emigrant Peak Ranch LLC are resolved, placing this Case on the hearing track is an excessive next step.

Instead, the claimants who did not comply with the April 26, 2023 Order Setting Last Settlement Filing Deadline will have their defaults entered and a deadline set for them to show cause why the Court should not amend these claims as requested in the June 26, 2023 Stipulation And Agreement. As Debra J. Carney, Richard L. Edward, Patricia A. Zellar, Robert P. Zellar, UC River Ranch LLC, Amanda J. Gentry, Raymond S. Gentry, Jeremy B. Beede, and Juana Beede did not file settlement by June 26, 2023 as directed in the April 26, 2023 Order Setting Last Settlement Filing Deadline, pursuant to Rule 55(a), M.R.Civ.P. and Rule 22, W.R.Adj.R., it is

ORDERED that the defaults of Debra J. Carney, Richard L. Edward, Patricia A. Zellar, Robert P. Zellar, UC River Ranch LLC, Amanda J. Gentry, Raymond S. Gentry, Jeremy B. Beede, and Juana Beede are ENTERED, and pursuant to section 85-2-248(9)(a), MCA, it is

ORDERED that the deadline for Debra J. Carney, Richard L. Edward, Patricia A. Zellar, Robert P. Zellar, UC River Ranch LLC, Amanda J. Gentry, Raymond S. Gentry, Jeremy B. Beede, and Juana Beede to show cause in writing why the Court should not proceed with amending claims 43B 193595-00 and 43B 193600-00 as requested in the June 26, 2023 Stipulation And Agreement is **July 31, 2023**. If no additional information is filed by this deadline, the Court will proceed with amending the claims as requested in the June 26, 2023 Stipulation And Agreement.

Nothing was filed. These documents are viewable in the Court's FullCourt Enterprise case management system.

The Stipulation And Agreement requests the addition of Paradise Ridge Revocable Trust as an owner on claim 43B 193600-00. This request should be pursued by filing an ownership update with the Montana Department of Natural Resources and Conservation.

APPLICABLE LAW

"All issue remarks to claims that are not resolved through the filing of an objection as provided in 85-2-233 must be resolved as provided in this section." Section 85-2-248(2), MCA.

A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content pursuant to section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect including for claimants objecting to their own claims. Rule 19, W.R.Adj.R.

FINDINGS OF FACT

1. For claim 43B 193595-00, the Preliminary Decree includes the following issue remarks:

THE CLAIMED FLOW RATE EXCEEDS THE 17 GPM PER ACRE GUIDELINE AND CANNOT BE CONFIRMED DUE TO LACK OF DATA. THE FLOW RATE EQUALS 28.00 GPM PER ACRE.

THE PLACE OF USE MAY BE INCORRECT. THE PLACE OF USE APPEARS TO BE 80 ACRES IN E2 SEC 18, TWP 06S, RGE 08E, PARK COUNTY. SEE DNRC MEMORANDUM DATED 03/02/1995.

The Preliminary Decree states the flow rate is 5.00 CFS to irrigate 80.00 acres. The Stipulation And Agreement includes the August 15, 2022 Affidavit Of Christine Jarrett which states that the entire claimed flow rate is needed due to the length of the ditch (approximately two miles) which crosses through “unusually gravelly soils” which results in significant seepage losses. The flow rate should not be changed. The flow rate issue remark should be removed as addressed and resolved.

The Preliminary Decree states that the place of use legal descriptions are:

<u>ACRES</u>	<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
60.00	NESE	18	6S	8S	PARK
<u>20.00</u>	SENE	18	6S	8E	PARK
80.00					

The place of use legal descriptions should be:

<u>ACRES</u>	<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
60.00	N2SE	18	6S	8S	PARK
<u>20.00</u>	S2NE	18	6S	8E	PARK
80.00					

The place of use issue remark should be removed as addressed and resolved.

As requested in the Stipulation And Agreement, the following remark should be added to the abstract of this claim:

THIS WATER RIGHT IS SUBJECT TO A PRIVATE AGREEMENT, WHICH IS ON FILE WITH THE WATER COURT IN CASE 43B-0248-R-2020.

2. For claim 43B 193600-00, the Preliminary Decree includes the following issue remark:

THE POINT OF DIVERSION APPEARS TO BE INCORRECT. THE POINT OF DIVERSION APPEARS TO BE IN THE SESWNE SEC 29 TWP 6S RGE 8E PARK COUNTY.

The Preliminary Decree states that the point of diversion legal description is the SESWSE section 20, T6S, R8E, PARK, the same as the point of diversion on claim 43B 193595-00. Agreement number 1 in the Stipulation And Agreement states that both claims are diverted through the same headgate in the SESWSE section 20, T6S, R8E, PARK. The point of diversion should not be changed. The point of diversion issue remark should be removed as addressed and resolved.

The Preliminary Decree states that the place of use legal descriptions are:

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
NESE	18	6S	8S	PARK
SENE	18	6S	8E	PARK

The place of use legal descriptions should be:

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
N2SE	18	6S	8S	PARK
S2NE	18	6S	8E	PARK

As requested in the Stipulation And Agreement, the following remark should be added to the abstract of this claim:

THIS WATER RIGHT IS SUBJECT TO A PRIVATE AGREEMENT, WHICH IS ON FILE WITH THE WATER COURT IN CASE 43B-0248-R-2020.

CONCLUSION OF LAW

The settlement filed by the parties is sufficient to resolve the issue remarks without evidentiary hearing. Sections 85-2-248(3) and (11), MCA.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusion of Law, this Master recommends that the Court make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin. A Post Decree Abstract of Water Right Claim for each claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW

Service Via USPS Mail:

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Livingston, MT 59047

Richard L. Edward
~~114 E Lewis St~~
~~Livingston, MT 59047~~
(Return mail received)

Robert J. DePaso
678 E River Rd
Pray, MT 59065-7111
406-223-0703
406-333-4460

Capt Kirk LLC
921 Lauder
Spicewood, TX 78669

Patricia A. Zellar
Robert P. Zellar
644 Aronson Ave
Billings, MT 59105

UC River Ranch LLC
1240 Beringer Way
Billings, MT 59106-2313

Amanda J. Gentry
Raymond S. Gentry
Jeremy B. Beede
Juana Beede
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Troy Weske
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tw59027@gmail.com

Note: Service List Updated 8/8/2023

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK
BASIN 43B

Water Right Number: 43B 193595-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:

ROBERT J DEPASO
678 E RIVER RD
PRAY, MT 59065 7111

PATRICIA A ZELLAR
644 ARONSON AVE
BILLINGS, MT 59105

ROBERT P ZELLAR
644 ARONSON AVE
BILLINGS, MT 59105

TROY WESKE
680 EAST RIVER RD
PRAY, MT 59065

PARADISE RIDGE REVOCABLE TRUST
4611 BIRCH COVE
HOUSTON, TX 77084 3602

RICHARD L EDWARD
114 E LEWIS ST
LIVINGSTON, MT 59047 3113

DEBRA J CARNEY
114 E LEWIS ST
LIVINGSTON, MT 59047 3113

CHRISTINE JARRETT
670 E RIVER RD
PRAY, MT 59065 7111

CAPT KIRK LLC
921 LAUDER
SPICEWOOD, TX 78669

Priority Date: JUNE 1, 1899

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 5.00 CFS

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 4 - MODERATELY LOW

Maximum Acres: 80.00
Source Name: SIXMILE CREEK
Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SESWSE	20	6S	8E	PARK

Period of Diversion: MAY 1 TO OCTOBER 1

Diversion Means: HEADGATE

Period of Use: MAY 1 TO OCTOBER 1

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	60.00		N2SE	18	6S	8E	PARK
2	20.00		S2NE	18	6S	8E	PARK
Total:	80.00						

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

193595-00 193600-00

THIS WATER RIGHT IS SUBJECT TO A PRIVATE AGREEMENT, WHICH IS ON FILE WITH THE WATER COURT IN CASE 43B-0248-R-2020.

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK
BASIN 43B

Water Right Number: 43B 193600-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:

TROY WESKE
680 EAST RIVER RD
PRAY, MT 59065

RAYMOND S GENTRY
16827 SUN COUNTRY DR
BEND, OR 97707 2253

AMANDA J GENTRY
16827 SUN COUNTRY DR
BEND, OR 97707 2253

UC RIVER RANCH LLC
1240 BERINGER WAY
BILLINGS, MT 59106 2313

CHRISTINE JARRETT
670 E RIVER RD
PRAY, MT 59065 7111

CPT KIRK LLC
921 LAUDER
SPICEWOOD, TX 78669

JEREMY B BEEDE
16827 SUN COUNTRY DR
BEND, OR 97707 2253

JUANA BEEDE
16827 SUN COUNTRY DR
BEND, OR 97707 2253

Priority Date: JUNE 1, 1899

Type of Historical Right: DECREED

Purpose (use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: SIXMILE CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SESWSE	20	6S	8E	PARK

Period of Diversion: MAY 1 TO OCTOBER 1

Diversion Means: HEADGATE

Period of Use: MAY 1 TO OCTOBER 1

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			N2SE	18	6S	8E	PARK
2			S2NE	18	6S	8E	PARK

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

193595-00 193600-00

THIS WATER RIGHT IS SUBJECT TO A PRIVATE AGREEMENT, WHICH IS ON FILE WITH THE WATER COURT IN CASE 43B-0248-R-2020.